

To: **The Aarhus Convention Compliance Committee**  
Attn: Ms Fiona Marshall  
Secretary to the Aarhus Convention Compliance Committee

Re.: Compliance review of communication ACCC/C/2014/104 the Netherlands  
Borssele nuclear power plant  
Reaction on the second progress report from the Netherlands, dd 1 October 2020

Amsterdam, 27 October 2020

Dear Chair, dear members of the ACCC, dear Ms Marshall,

As communicant in the case ACCC/C/2014/104, I would like to make the following remarks:

1. The Netherlands state in its progress report that this is only related to the implementation of the recommendations made in paragraph 89 of the Committee's findings. Indeed, as in its earlier reports, the Netherlands again did not report on which steps it has taken in order to come into compliance with the Convention beyond the reacting to the recommendations.
2. It appears that our remarks on this aspect reacting on the earlier progress report, which we have given during the virtual session of the Committee on 11 March 2020, and which we have worked out further in our letter of 20 May 2020, have not been taken into account by the Netherlands, or rather have been completely ignored.
3. Concerning the non-compliance in the case of the lifetime extension of the Borssele nuclear power plant (NPP) as reflected in paragraph 88 of the findings from the ACCC, the Netherlands have so far not taken any step to bring the practice into compliance on the basis of existing legislation. Indeed, as we already communicated in March, after the publication of the Committee's findings, the Dutch authorities had to authorise another license change for the Borssele NPP, which again took place without public participation concerning the environment or an EIA having been carried out. Greenpeace and the Dutch NGO WISE Netherlands have filed an appeal against this situation in January 2019, which is still awaiting a court hearing by the Raad van State.  
In two years time, the NPP will have to undergo its next periodic safety review, including decisions on measures to be taken to enable operation between 2023 and 2033, and,

again, there is no EIA or public participation concerning the environment initiated or foreseen to inform any decision resulting from this periodic safety review.

4. We would like to stress that there is legally nothing standing in the way of the Dutch authorities, i.c. the Ministry of for Infrastructure and Water Management, to request the operator of the Borssele NPP, EPZ, to provide an environmental impact assessment report and to submit this to public participation ahead of the upcoming periodic safety review, so that any decision deriving from this review can also be informed by public participation concerning the environmental aspects of operation of the nuclear power plant in the period between 2023 and 2033.  
Nor was there for the last license modification in 2018. Indeed, the Ministry actively decided that an EIA was not necessary. On the basis of the existing legislation, it could have requested an EIA and/or the provision of the information necessary under art. 6(6) of the Convention ahead of the change in license for the Borssele NPP currently contested before the Raad van State, and make that part of the public participation procedure. But it failed to do so. The Ministry argued that the still contested license change in itself had no significant impact on the environment, completely ignoring the fact that the by the license enabled operation of Borssele NPP has impacts on the environment which have not been assessed and submitted to public participation, as concluded by the ACCC in paragraph 88 of its findings. By not initiating an EIA or public participation concerning the environment before the upcoming periodic safety review, the Ministry enables the relevant authority to authorise operation of Borssele beyond 2023 to 2033.
5. For that reason, we request the Compliance Committee and the Meeting of Parties not to be satisfied with the legal steps taken by the Netherlands for concluding compliance with the Convention. Non-compliance continues to exist as long as the Borssele NPP can operate on the basis of decisions that have not been informed by public participation concerning the environment.
6. This leaves aside that on the basis of the jurisprudence set by the European Court of Justice in the case of Doel 1 and especially Doel 2 in Belgium, there exists an obligation for the Netherlands to retroactively carry out an EIA on the basis of the European EIA and Habitat Directives.

Sincerely,



Jan Haverkamp

[jan.haverkamp@greenpeace.org](mailto:jan.haverkamp@greenpeace.org), +31 621 334 619

In the name of:

Greenpeace Netherlands (communicant in ACCC/C/2014/104)

WISE Nederland